



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2003

Mr. Clark T. Askins
Assistant City Attorney
Askins & Armstrong, P.C.
P.O. Box 1218
La Porte, Texas 77572-1218

OR2003-7205

Dear Mr. Askins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189253.

The La Porte Police Department (the "department"), which you represent, received a request for several categories of information relating to a particular case, suspect, and officer, as well as certain department policies and manuals. You advise that most of the requested information has been provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information deemed confidential by statutes such as section 143.089 of the Local Government Code. We understand that the City of La Porte is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. Corpus Christi*, No. 03-02-00785-CV, slip op., 2003 WL 21241652, at *7 (Tex. App.—Austin May 30, 2003, no pet. h.).

Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. Such investigatory records are subject to release under chapter 552 of the Government Code. *See Local Gov't Code* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the internal affairs records at issue are maintained in the police department's internal file pursuant to section 143.089(g), and that none of this information is subject to section 143.089(a). We therefore conclude that this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

In some circumstances, a requestor may have a special right of access to information that is otherwise confidential. Section 552.023 in relevant part states:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Thus, section 552.023(b) provides that a governmental body "may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests." In this instance, the information at issue is confidential under section 143.089(g) of the Local Government Code for reasons other than the protection of any individual's privacy interests. In addition, this office has interpreted section 143.089 to grant a right of access only to the information in the personnel file maintained in section 143.089(a). *See Open Records Decision No. 650 at 3 (1996)* (confidentiality provision of section 143.089(g) contains no exceptions). Therefore, the requestor does not have a special right of access to the internal affairs records at issue.

We now address your claim under section 552.108 in relation to the remaining submitted information, which you state is the department's "investigative file pertaining to the present case." Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the

detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body that raises section 552.108 must sufficiently explain how and why section 552.108 is applicable to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the information at issue pertains to a case that is currently pending. Based on your representation, we conclude that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978). Therefore, we find that section 552.108(a)(1) is applicable to this information.

Section 552.108 does not, however, except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186-87). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the department may withhold the information relating to the pending case under section 552.108(a)(1).¹ As section 552.108 is dispositive for this information, we do not address your remaining argument.

In summary, the department must withhold the submitted internal affairs documents under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The submitted information pertaining to the pending criminal case may be withheld under section 552.108, except that basic information pertaining to the case must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

¹ We note that the requestor also does not have a special right of access pursuant to section 552.023 to information involving his client that is protected by section 552.108. Section 552.108 protects law enforcement interests, and is not intended to protect an individual’s privacy interests. *See* Gov’t Code §§ 552.023, 552.108.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

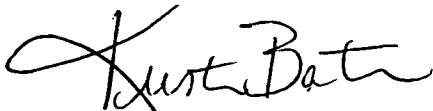
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 189253

Enc. Submitted documents

c: Mr. Dale Paschall
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(w/o enclosures)